within the provision of a statement leading to the discovery of a fact and that it would be immensely assisted in its task if the prosecution were strictly careful to limit the evidence to the actual statement given.

Order accordingly.

Solicitors: *Ngeow & Co.*

PUBLIC PROSECUTOR v. LEONG KUAI HONG

[F.C. (Suffian L.P., Chang Min Tat & Abdul Hamid F.JJ.) December 9, 1980 & January 20, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 28 of 1980]

Criminal Law & Procedure — Charge of being in control of hand grenades — Hand grenades not containing explosives — Whether ammunition — Internal Security Act, 1960, s. 2.

Internal Security — Ammunition — Explained — Internal Security Act, 1960, s. 2.

Interpretation of Statutes — Penal Statute — To be construed strictly.

The respondent had been acquitted by the learned trial judge as he held that the two home-made hand grenades proved to have been in the custody of the respondent were not ammunition within section 2 of the Internal Security Act, 1960. The hand grenades did not contain any explosive but they had four parts, namely, striker, percussion cap, safety fuse and detonator. The Public Prosecutor appealed.

Held: as the hand grenades were devoid of any explosive substance they did not come within the definition of ammunition and the learned trial judge was correct in acquitting the respondent.

Cases referred to:-

(1) *Ismail bin Haji Ibrahim* v. *Public Prosecutor* [1949] M.L.J. 139.

(2) *Chong Kim Seng* v. *Public Prosecutor* [1949] M.L.J. 109.

(3) *Liew Sai Wah* v. *Public Prosecutor* [1968] 2 M.L.J. 1.

(4) *L.N.E.R. Co.* v. *Berriman* [1946] A.C. 278.

FEDERAL COURT.

Lamin bin Haji Mohamed Yunus (Deputy Public Prosecutor) for the appellant.

Karpal Singh (*Y.N. Ngeow* with him) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): The main issue in this appeal is whether or not the two home-made hand grenades proved to have been in the control of the respondent contrary to section 57(1)(b) of the Internal Security Act, 1960 ("the Act") were ammunition within section 2 of the Act.

The learned trial judge decided that they were not and acquitted and discharged the respondent, and the learned Public Prosecutor appeals from that decision.

Staff Sergeant Duraisingam of the Second Engineers Squadron who was in charge of booby traps and engineering works, with others from the Bomb Disposal Unit, went to the scene to retrieve and neutralize the grenades. In evidence he said that the grenades, which were home-made, could not explode as they did not contain explosive, but that he still called them hand grenades because they had four parts, namely striker, percussion cap, safety fuse and detonator.

There was no definite finding by the learned trial judge as to whether or not the grenades had these four parts, though he did mention them in his judgment; but as there was no cross-examination on them, it may be taken as a fact that they did have them.

Ammunition is defined by section 2 of the Act as meaning three things, as is clear if the definition is re-arranged as follows:

(a) it means ammunition for any fire-arm as hereinafter defined;

(b) it includes grenades, bombs and other like missiles whether capable of use with such a fire-arm or not; and

(c) it includes any ammunition [including grenades] containing or designed or adapted to contain any noxious liquid, gas or other thing.

It will be noted that the definition does *not* refer to component parts of the objects therein — in contrast to the definition of fire-arm in the same section. That definition reads:

"fire-arm means any lethal barrelled weapon of any description etc. . . . , and *includes any component part* of any such weapon as aforesaid."

That definition is identical with the definition of the same word in the Emergency Regulations, 1948; and our predecessor, the Court of Appeal, indicated in *Ismail bin Haji Ibrahim* v. *Public Prosecutor*[1] in what circumstances a person may be found guilty of carrying a fire-arm contrary to regulation 4(1)(a) of the regulations, though he carried only parts thereof.

The definition of ammunition may also be contrasted with the definition of explosive as meaning, *inter alia,* any apparatus, machine, implement or material used for causing any explosition *and "any part* of any such apparatus, machine or implement."

The instant case was tried under the Essential (Security Cases) Regulations, 1975, P.U.(A) 320 of 1975, as amended by P.U.(A) 362 of the same year; and regulation 21(6) thereof again provides that a fire-arm and explosive include any component part thereof. Regulation 21(6) reads:

"In a security case in which firearm or explosive is the subject matter of the charge or was used in the commission of the offence, such firearm or explosive shall be deemed at the time of the offence to have been in serviceable condition or otherwise capable of being used for the purpose for which such firearm or explosive is designed; and for the purpose of this regulation, a firearm or explosive *includes any component part* thereof."

Be it noted there is no provision in this regulation — made as recently as 1975 — that a grenade includes its component parts.

In our judgment, the contrast between the definition of ammunition on the one hand and of fire-arm and explosive on the other, points to a clear intention on the part of the legislature that in the case of a grenade there must be proof that it must be a complete grenade and that it must at any rate contain explosive, in which event it is unnecessary to prove

its serviceability. The fact that when thrown it misfires because for instance the explosive is damp, is immaterial, *Chong Kim Seng* v. *Public Prosecutor.*[2]

The learned judge's decision in the instant case is, unbeknown to him, supported by the decision of the Privy Council in *Liew Sai Wah* v. *Public Prosecutor,*[3] a case cited for the first time only before us. There six hand grenade bodies found on the accused were bodies of British 36M grenades; they were not bodies of drill or dummy grenades; grenades of this type were normally filled with an explosive called Baratol; no evidence was given at the trial proving that they contained explosive; and they were not complete grenades as they lacked levers, safety pins, detonators and base plugs. At the trial the accused contended that the grenade bodies were not ammunition within section 2 of the Act. The learned judge and subsequently the Federal Court ruled that they were. The Privy Council however ruled otherwise.

After observing the difference in the definition in the Act of ammunition and fire-arm and explosive Their Lordships said at page 2.

"If it had been intended that the definition of ammunition should include any component part of a grenade, that could easily have been stated. The omission to do so is not only significant when compared with the definition of explosive and fire-arm. In 1938 the Malayan Corrosive and Explosive Substances and Offensive Weapons Ordinance was made. In that Ordinance explosive substance was defined to include any bomb or grenade 'and any part of such bomb, or grenade....'"

Their Lordships' conclusion was in application of the general principle that the "Internal Security Act is a penal Act and must be construed strictly" (page 2). They quoted with approval this *dictum* of Lord Simonds in *L.N.E.R. Co.* v. *Berriman,*[4] at page 313:

"A man is not to be put in peril upon an ambiguity, however much or little the purpose of the Act appeals to the predilection of the court."

But as already stated, the grenade bodies in *Liew Sai Wah*[3] did not only lack explosive; they also lacked levers, safety pins, detonators and base plugs. Does not the fact that the grenades in the instant case have the four parts already referred to (striker, percussion cap, safety fuse and detonator) make a difference? Encik Lamin for the Public Prosecutor argued that it does and that it makes the casings with the parts grenades within the Act. With respect we do not agree. Even if the detonator is an explosive within the meaning of the Act, the presence of this component does not make a hand-grenade which is devoid of any explosive substance ammunition for the purpose of the charge facing the respondent. *Liew Sai Wah*[3] makes that clear.

Being in agreement with the learned trial judge's conclusion, we would dismiss this appeal.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

PUBLIC PROSECUTOR v. OO LENG SWEE & ORS.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Chang Min Tat F.J.J.) January 8 & 22, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 26 of 1980]

Criminal Law and Procedure — Sentence — Charge of trafficking in dangerous drugs — Death sentence substituted for that of life imprisonment — Dangerous Drugs Ordinance, 1952, s. 39B(1)(a).

Misuse of Drugs — Trafficking — Manufacturing heroin in large quantity — Death sentence.

The respondents had pleaded guilty to a charge of trafficking in dangerous drugs. They had been caught red-handed in the processing of a large quantity of heroin. The learned trial judge took into consideration that the respondents were first offenders and had pleaded guilty and he sentenced them to life imprisonment. The Public Prosecutor appealed.

Held: the appellants should have been sentenced to death, notwithstanding that they were first offenders and had pleaded guilty, as they were engaged in manufacturing heroin in a systematic and in a big way.

Case referred to:-

(1) *Loh Hock Seng* v. *Public Prosecutor* [1980] 2 M.L.J. 13.

[The following cases were also cited in argument:- *Robert Hugh Fraser* (1967) 51 C.A.R. 470; *Frank Abiodun Macauley* (1968) 52 C.A.R. 230, 232; *San Shun Li* (1973) 57 C.A.R. 704, 707-8].

FEDERAL COURT.

Lamin bin Haji Mohamad Yunus (Deputy Public Prosecutor) for the appellant.

R. Rajasingam for the first respondent.

Jag-Jit Singh for the second respondent.

Karpal Singh for the third respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): We allowed this appeal by the Public Prosecutor against the inadequacy of the sentence passed on each of the three accused, and did a very unusual thing. For the sentences of life imprisonment we substituted sentences of death. To the best of our knowledge, this is only the second time this court and our predecessors, the Court of Appeal, have done so in the last 32 years. We did so for the following reasons.

But first, the facts.

On April 19, 1977, at about 6.10 p.m. a police party led by Acting A.S.P. Tang Yau Hie raided a house, 6 Lorong Enam, Jalan Bunga Tanjong, Kulim. They entered through the back door which happened to be ajar. There they saw the three accused squatting and facing five frying pans placed on five burning charcoal stoves. A fan was blowing. The contents of the pans were being dried. The accused were arrested.

Various articles were seized by the police — among which were 3,441 grammes of morphine and 2,880.3 grammes of heroin, making a total of 6,321.3 grammes of *dadah* (deleterious drugs), one of the biggest hauls ever captured.

Many of the other articles appeared to have been used in the manufacture of *dadah;* and so on the